

SAMPLE

# REPAIR HOLDBACK AND SECURITY AGREEMENT

THIS REPAIR HOLDBACK AND SECURITY AGREEMENT (this "**Agreement**") is made and entered into as of **August 16, 2022**, by and between **REPAIR SAMPLE LLC, a California limited liability company ("Borrower")**, and **LOANDOC SOLUTIONS, a California corporation ("Lender")**.

## RECITALS

- A. Lender has agreed to make and Borrower has agreed to accept a loan in the principal amount of **ONE HUNDRED TWENTY-EIGHT THOUSAND AND 00/100 DOLLARS (US \$128,000.00)** (the "**Loan**"), which Loan is (1) governed by a Loan Agreement of even date herewith by and between Borrower and Lender (the "**Loan Agreement**"), (2) evidenced by a Promissory Note of even date herewith executed by Borrower in favor of Lender (the "**Note**") and (3) secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith (the "**Mortgage**") encumbering real property commonly known as **12941 CARRIE CT, San Diego, CA 92039** which is legally described in the Mortgage (the "**Mortgaged Property**"). Capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in the Loan Agreement, the Mortgage or the Note.
- B. As a condition of making the Loan, Lender is requiring Borrower and Borrower has agreed to make certain repairs (the "**Repairs**") to the Mortgaged Property, which Repairs are generally described in the "Schedule of Required Repairs" attached to this Agreement as Exhibit "A".
- C. Lender and Borrower are desirous of reducing to writing all of their agreements regarding the required Repairs.
- D. Borrower has agreed to pledge to Lender a portion of the proceeds of the Loan to secure Borrower's obligations with respect to the Loan and the Repairs.

**NOW, THEREFORE**, for and in consideration of the Loan, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower agree as follows:

1. Repairs. Borrower covenants and agrees with Lender as follows:

(a) Commencement of Work. Borrower states that, except as set forth on the "Schedule of Work in Progress" attached to this Agreement as Exhibit "B" attached hereto, prior to the recordation of the Mortgage, no work of any kind has been or will be commenced or performed upon the Mortgaged Property and no materials or equipment have been or will be ordered or delivered to or upon the Mortgaged Property with respect to the Repairs. In the event that any work of any kind has been commenced or performed upon the Mortgaged Property with respect to the Repairs or in the event that any materials or equipment have been ordered or delivered to or upon the Mortgaged Property with respect to the Repairs, then (i) prior to the execution of the Mortgage, Borrower shall fully disclose in writing to the title insurance company issuing the mortgagee title insurance policy insuring the lien of the Mortgage that work has been commenced or performed on the Mortgaged Property or materials or equipment have been ordered or delivered to or upon the Mortgaged Property with respect to the Repairs, (ii) prior to the execution of the Mortgage, Borrower shall have obtained and delivered to Lender and the title company issuing the mortgagee title insurance policy insuring the lien of the Mortgage lien waivers from all contractors, subcontractors, suppliers, or any other applicable party, pertaining to all work commenced or performed on the Mortgaged Property or materials or equipment ordered or delivered to or upon the Mortgaged Property with respect to the Repairs, and (iii) the final mortgagee's title insurance policy insuring the lien of the Mortgage shall take no exception from coverage for any mechanics or materialmen's liens.

(b) Construction. Borrower shall commence the Repairs as soon as practicable after the date of this Agreement and funding of the Loan and shall diligently proceed with and complete the Repairs to Lender's satisfaction on or before **July 1, 2023** (the "**Completion Date**") in a workmanlike manner and in accordance with the Schedule of Required Repairs, good building practices and all applicable laws, ordinances, rules and regulations.

(c) Changes in Schedule of Required Repairs. Without the prior written consent of Lender, Borrower will make no departures from or alterations to the Schedule of Required Repairs.

**Repair Holdback and Security Agreement**

**Loan No.: 999999999**

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(d) Inspections. Borrower shall permit Lender or any Person designated by Lender (including without limitation a professional inspection engineer) and any interested governmental authority, at any time and from time to time, to inspect the Repairs and Mortgaged Property and to examine and copy all of Borrower's books and records and all contracts and bills pertaining to the Repairs and Mortgaged Property. Lender shall be entitled to charge Borrower reasonable fees for performing any such inspections and/or an amount sufficient to reimburse Lender for all fees and expenses charged by any professional inspection engineer employed by Lender in connection with any such inspection. Any such fees due and owing Lender shall be immediately payable by Borrower to Lender and, if not so paid, shall be added to the outstanding balance of the Note, secured by the Mortgage and payable to Lender by Borrower in accordance with the provisions of the Mortgage pertaining to the protection of Lender's security and advances made by Lender. Borrower hereby agrees that Lender may in its sole discretion, without further notice to or authorization by Borrower, deduct from the Holdback (as defined below) any such fees from time-to-time incurred. Borrower agrees to cause the replacement of any material or work that is defective, unworkmanlike, does not comply with any applicable law, ordinance, rule or regulation, or does not comply with the requirements of this Agreement, as determined by Lender.

(e) Purchases. Without the prior written consent of Lender, no materials, machinery, equipment, fixtures or any other part of the Repairs shall be purchased or installed under conditional sale contracts or lease agreements, or any other arrangement wherein title to such Repairs is retained or subjected to a purchase money security interest, or the right is reserved or accrues to anyone to remove or repossess any such Repairs, or to consider them as personal property.

2. Holdback and Security Agreement.

(a) Concurrently with funding of the Loan, **FIFTY THOUSAND AND 00/100 DOLLARS (US \$50,000.00)** of the proceeds of the Loan (the "**Holdback**") shall be disbursed by Lender to a general ledger account (the "**Account**") held by Lender. Borrower hereby grants to Lender a first priority lien and security interest in the Account, the funds therein, and the proceeds thereof, to secure performance by Borrower of all of Borrower's obligations under and with respect to the Loan, including without limitation the obligations under this Agreement. In the event of an Event of Default by Borrower under or with respect to the Loan, including without limitation a default by Borrower under this Agreement, Lender shall have, in addition to all of the remedies provided in all of the other documents evidencing and securing the Loan, all of the rights of a secured creditor under the Uniform Commercial Code with respect to the Account and the funds therein and the proceeds thereof, and Lender may apply the funds therein and proceeds thereof to the outstanding balance of the Loan.

(b) The Account shall not bear interest. At Lender's option the Account may be a book entry account with no obligation on the part of Lender to segregate the Account from Lender's other funds or assets. Notwithstanding the disbursement of the Holdback to the Account rather than to Borrower, the entire amount of the Loan (including the Holdback) shall be deemed fully disbursed to Borrower for purposes of determining interest accrued and payments due under the Loan. Lender's nonrefundable loan fee based on the full Loan amount shall be payable upon the funding of the Loan.

(c) At such time that Lender is satisfied that Borrower has timely completed all of its obligations under this Agreement, Lender shall disburse to Borrower all of the funds in the Account; provided that at Lender's option Lender may make disbursement directly to the applicable contractors, laborers, and materialmen. Such disbursement shall extinguish the security interest in the Account, but shall not otherwise constitute a waiver by Lender of any of its rights or remedies and shall not excuse Borrower from any of its obligations under or with respect to the Loan or this Agreement.

3. Reporting Requirements; Completion. Prior to the Completion Date and disbursement of the Account to Borrower, Borrower shall deliver to Lender a written request for release of the Holdback. The request shall be accompanied by evidence satisfactory to Lender that the Repairs have been completed and paid for by Borrower. In addition, at Lender's option, Borrower shall pay for and deliver to Lender any or all of the following:

(a) Contractor's Certificate. A certificate signed by each major contractor and supplier of materials, as reasonably determined by Lender, engaged to provide labor or materials for the Repairs to the effect that such contractor or supplier has been paid in full for all work completed and that the portion of the Repairs provided by such contractor or supplier has been fully completed in accordance with the plans and specifications (if any)

provided to it by Borrower and that such portion of the Repairs is in compliance with all applicable building codes and other rules and regulations promulgated by applicable regulatory or governmental authorities;

(b) Borrower's Certificate. A certificate signed by Borrower to the effect that the Repairs have been fully paid for and no claim or claims exist against Borrower or against the Mortgaged Property or Improvements out of which a lien based on furnishing labor or material exists or might ripen. Borrower may except from the certificate described in the preceding sentence any claim or claims that Borrower intends to contest, provided that any such claim or claims are described in Borrower's certificate and Borrower certifies to Lender that Borrower has posted a bond or other security acceptable to Lender with an escrow agent acceptable to Lender, in an amount sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims. If required by Lender, Borrower also shall certify to Lender that such portion of the Repairs is in compliance with all applicable zoning ordinances;

(c) Engineer's or Inspector's Certificate. A certificate signed by a professional engineer or inspector employed by Lender to the effect that the Repairs have been completed in a good and workmanlike manner in compliance with the Schedule of Required Repairs and all applicable building codes, zoning ordinances and other rules and regulations promulgated by applicable regulatory or governmental authorities;

(d) Lien Waivers. Unconditional lien waivers from all Persons providing labor or materials in connection with the Repairs or who otherwise might have acquired liens relating to the Repairs;

(e) Title Insurance. An endorsement to the title insurance policy with respect to the lien of the Mortgage, which endorsement shall insure that the Loan, including the Holdback, constitutes a first lien on the Mortgaged Property subject only to exceptions approved by Lender; and

(f) Other Certificates. Any other certificates of approval, acceptance or compliance required by Lender from or by the city, county, state or federal governmental authorities having jurisdiction over the Mortgaged Property and the Repairs.

4. Lien Protection. Borrower shall promptly pay or cause to be paid, when due, all costs, charges and expenses incurred in connection with the construction and completion of the Repairs, and shall keep the Mortgaged Property free and clear of any and all liens other than the lien of the Mortgage and any other junior lien which may be consented to by Lender.

5. Adverse Claims. Borrower shall promptly advise Lender in writing of any litigation, liens, or claims affecting the Mortgaged Property and of all complaints and charges made by any governmental authority or any governmental department, bureau, commission or agency exercising supervision or control over Borrower or its business, which may delay or adversely affect the Repairs.

6. Compliance With Laws; Insurance Requirements.

(a) Compliance With Laws. All Repairs shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(b) Insurance Requirements. In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workers' compensation, builder's risk (if required by Lender), and public liability insurance and other insurance required under applicable law in connection with any of the Repairs. All such policies shall be in form and amount satisfactory to Lender. All such policies which can be endorsed with standard mortgage clauses making losses payable to Lender or its assigns shall be so endorsed. The originals of such policies (or copies or certificates satisfactory to Lender) shall be deposited with Lender.

7. Right to Complete Repairs. If Borrower abandons or fails to proceed diligently with the Repairs or otherwise is in default under this Agreement, Lender (or a receiver appointed by the applicable court at Lender's request) shall have the right (but not the obligation) to enter upon the Mortgaged Property and take over and cause the completion of the Repairs. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of Borrower, and Lender is hereby irrevocably appointed the attorney in fact of Borrower, such appointment being coupled with an interest, to enter into such contracts, incur such obligations, enforce any contracts or agreements made by or on behalf of Borrower (including the prosecution and defense of all actions and proceedings in connection with the Repairs and the payment, settlement, or compromise of all claims for materials

and work performed in connection with the Repairs) and do any and all things necessary or proper to complete the Repairs including signing Borrower's name to any contracts and documents as may be deemed necessary by Lender. In no event shall Lender be required to expend its own funds to complete the Repairs, but Lender may, in Lender's sole discretion, advance such funds. Any funds advanced shall be added to the outstanding balance of the Note, secured by the Mortgage and payable to Lender by Borrower in accordance with the provisions of the Mortgage pertaining to the protection of Lender's security and advances made by Lender. Borrower waives any and all claims it may have against Lender for materials used, work performed or resultant damage to the Mortgaged Property.

8. Post Default. If Borrower defaults in the performance of its obligations under this Agreement or under the Note, Mortgage, Loan Agreement or any other Loan Document, Lender and its successors and assigns shall have all remedies available to them under the Loan Documents and a default under this Agreement shall be a default under the Loan Documents.

9. No Amendment. Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Note, Loan Agreement, Mortgage or any other Loan Document and, if there shall exist a conflict between the terms and provisions of this Agreement and those of the Note, Loan Agreement, Mortgage or other Loan Documents, then the terms and provisions of the Note, Loan Agreement, Mortgage and other Loan Documents shall control.

10. Release; Indemnity.

(a) Release. Borrower covenants and agrees that, in performing any of its duties under this Agreement, neither Lender nor any of its successors and assigns shall be liable for any losses, costs or damages which may be incurred by any of them as a result thereof, except for any losses, costs or damages arising out of the willful misconduct or gross negligence of such party.

(b) Indemnity. Borrower hereby agrees to indemnify and hold harmless Lender and its successors and assigns, against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed or incurred by any of them in connection with this Agreement.

11. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the state where the Mortgaged Property is located.

12. Successors and Assigns. Borrower acknowledges and agrees that Lender, at its option, may assign or otherwise transfer the Loan and all documents evidencing and securing the Loan, including, but not limited to, this Agreement, to other parties subsequent to the execution of this Agreement. This Agreement shall be binding upon the successors and assigns of Borrower and Lender. Borrowers may not assign its rights, interests, or obligations under this Agreement without first obtaining Lender's prior written consent.

13. Attorneys' Fees. In the event that Lender or its successors or assigns shall engage the services of an attorney at law to enforce the provisions of this Agreement against Borrower, then Borrower shall pay all costs of such enforcement, including any reasonable attorneys' fees actually incurred.

14. Remedies Cumulative. In the event of Borrower's default under this Agreement, Lender may exercise all or any one or more of its rights and remedies available under this Agreement, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and Lender's exercise of any particular right or remedy shall not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time as often as may be deemed necessary by Lender.

15. Determinations by Lender. In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

16. Completion of Repairs. Lender's acknowledgment of completion of any Repair in a manner satisfactory to Lender shall be solely to protect Lender's own interests and shall not be relied upon by Borrower or any third party. Such acknowledgment shall not be deemed a certification by Lender that the Repair has been completed in accordance with any applicable plans, specifications, building, zoning or other codes, ordinances, statutes, laws,

regulations or requirements of any governmental authority or agency. Borrower shall at all times have the sole responsibility for insuring that all Repairs are completed in accordance with all such plans, specifications, and governmental requirements.

17. No Agency or Partnership. Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner, fiduciary, or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

18. Notices, Deliveries or Correspondence to Lender. All notices, deliveries or other correspondence required to be made or otherwise intended for Lender under this Agreement shall be made to Lender at the following notice address for Lender:

LOANDOC SOLUTIONS  
2932 E 224th Place  
Sauk Village, IL 60411

19. Entire Agreement. This writing constitutes the entire agreement of the parties relative to the Repairs. Any modification or amendment hereto shall be ineffective unless in writing and signed by the parties hereto.

**ATTACHED EXHIBITS.** The following Exhibits are attached to this Agreement:

Exhibit "A"      Schedule of Required Repairs (required)  
Exhibit "B"      Schedule of Work in Progress (required)

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**SIGNATURE(S) ON FOLLOWING PAGE(S)**

SAMPLE

**BORROWER:**  
**REPAIR SAMPLE LLC,**  
a California limited liability company

By: \_\_\_\_\_  
**HARRY POTTER,**  
Manager

**SIGNATURE(S) CONTINUED ON FOLLOWING PAGE(S)**

**SAMPLE**

**LENDER:**  
**LOANDOC SOLUTIONS,**  
**a California corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT "A"**

**Schedule of Required Repairs**

25,000 - Bathroom

25,000 - Backyard

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**EXHIBIT "B"**

**Schedule of Work in Progress**

**NONE**

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